

November 3, 2010

Water Docket
Environmental Protection Agency
Mail code 2822T
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

RE: TMDL for the Chesapeake Bay Watershed
(Docket ID No. EPA –R03-OW- 2010-0736)

Dear Madam or Sir:

On behalf of the Home Builders Association of Virginia (HBAV), thank you for the opportunity to comment on the Chesapeake Bay Watershed TMDL. HBAV has major concerns regarding the timing and certain aspects of the proposed TMDL by the Environmental Protection Agency (EPA).

HBAV is a 4,300 business organization of home builders and companies that provide products and services to the housing industry in Virginia. As you may know, the home building industry and its numerous construction and retail partners in Virginia are currently experiencing the 5th straight year of an historic downturn in production and sales – a fact contributing significantly to unemployment throughout the Commonwealth. Unfortunately, prospects for improvements in the housing industry in 2011 are dim.

As such, we are astonished, that during this difficult economic period for the nation and Virginia, we find our industry along with numerous Virginia businesses, local governments, farmers and the Commonwealth itself facing an unprecedented and unfunded Federal mandate – an untenable TMDL for the Chesapeake Bay. **Regrettably, the EPA has chosen not to conduct cost analysis for the Bay TMDL, and we believe this mandate will not only extend the so-called jobless recovery period, but expand it into many other sectors of the state's economy.**

For that reason, HBAV strongly urges the EPA to be responsive to the many concerns of the home building industry, the broad based business community, localities and other affected source sectors on the economic impact and cost associated with the implementation of the TMDL. Surely the EPA can slow down to find better balance between the economic impact of the TMDL and the “immediate” clean up needs of the Bay.

It has been well documented, and the EPA has acknowledged that, at tremendous expense, Virginia has made tremendous progress in reducing nitrogen, phosphorous, and sediment discharges into the Chesapeake Bay and its tributaries from all source sectors since 1985. Virginia Nitrogen loads have been reduced from almost 90 million pounds per year to just above 60 million pounds per year.

Phosphorous loads have been reduced from almost 12 million pounds per year to just over 6 million pounds per year. And, the Commonwealth and its citizens have made a big public commitment to continue the state's own pollution diet. Virginia does not need, nor should the EPA demand additional draconian clean up actions at this time, especially with no regard to the economic impact and costs of their demands.

HBAV also must express a major concern about the number of proven deficiencies in the Chesapeake Bay Model, which will have a significant impact on the pollutant loading of the Watershed Implementation Plans being developed by the Bay states. The independent United States Geological Survey has questioned the accuracy of the impervious surface data in model, and others have questioned the accuracy of the agricultural BMP projections. Those two (2) flawed data points are just a sampling of other significant flaws in the model that are resulting in lower nutrient caps for all Bay states. For this reason alone, the EPA should delay implementing the TMDL. Finalizing the TMDL before finalizing the modeling makes no sense.

The 4,300 business members of HBAV are also very disturbed by the short 45 days for the public to provide comments on the TMDL. Given the complex nature of the TMDL, and the quantified significant costs to all involved, such a limited public comment period is inadequate and should be immediately extended. For the EPA to impose this level of impact on the well being of the Commonwealth, its citizens and its businesses, while ignoring a notice requirement and cost analysis requirements of federal law (the Administrative Procedures Act and the Small business Regulatory Act), is wrong and will not stand.

HBAV would also question the wisdom and authority the EPA to mandate that private owners reduce or retrofit their property's impervious surfaces, as may be imposed in the proposed backstop allocations. Both the U.S. Constitution and Virginia Constitution protect private property owners from a "taking without just compensation" by the government. The very high estimated costs associated with the retrofit requirements or mandates in the proposed backstop allocations clearly approach a "taking without just compensation" of private property. HBAV would urge the EPA to seek other less expensive and less intrusive solutions to the clean up of the Bay and its tributaries.

Thank you for this opportunity to comment on this complex TMDL and it's the many uncertainties embedded in its provisions.

Best regards,

Michael D. Newsome
President